BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[EPA-HQ-OPPT-2018-0166; FRL-9976-04]

RIN 2070-AJ82

Review of the Dust-Lead Hazard Standards and the Definition of Lead-Based Paint

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Addressing childhood lead exposure is a priority for EPA. As part of EPA's efforts to reduce childhood lead exposure, EPA evaluated the current dust-lead hazard standards (DLHS) and the definition of lead-based paint (LBP). Based on this evaluation, EPA is proposing to lower the DLHS from 40 µg/ft^2 and 250 µg/ft^2 to 10 µg/ft^2 and 100 µg/ft^2 on floors and window sills, respectively. EPA is proposing no changes to the current definition of LBP due to insufficient information to support such a change.

DATES: Comments must be received on or before *[insert date 45 days after date of publication in the **Federal Register**]*.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2018-0166, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

• *Mail*: Document Control Office (7407M), Office of Pollution Prevention and

Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Hand Delivery*: To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html*.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* John Yowell, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: 202-564-1213; email address: *yowell.john@epa.gov*.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you conduct LBP activities in accordance with 40 CFR 745.227, if you operate a training program required to be accredited under 40 CFR 745.225, if you are a firm or individual who must be certified to conduct LBP activities in accordance with 40 CFR 745.226, or if you conduct rehabilitations in accordance with 24 CFR 35. You may also be affected by this action, in accordance with 40 CFR 745.107, as the seller or lessor of target housing, which is most pre-1978 housing. See 40

CFR 745.103. For further information regarding the authorization status of States, territories, and Tribes, contact the National Lead Information Center at 1–800–424–LEAD (5323). The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

• Building construction (NAICS code 236), e.g., single-family housing construction, multi-family housing construction, residential remodelers.

• Specialty trade contractors (NAICS code 238), e.g., plumbing, heating, and air-conditioning contractors, painting and wall covering contractors, electrical contractors, finish carpentry contractors, drywall and insulation contractors, siding contractors, tile and terrazzo contractors, glass and glazing contractors.

• Real estate (NAICS code 531), e.g., lessors of residential buildings and dwellings, residential property managers.

• Child day care services (NAICS code 624410).

• Elementary and secondary schools (NAICS code 611110), e.g., elementary schools with kindergarten classrooms.

• Other technical and trade schools (NAICS code 611519), e.g., training providers.

• Engineering services (NAICS code 541330) and building inspection services (NAICS code 541350), e.g., dust sampling technicians.

• Lead abatement professionals (NAICS code 562910), e.g., firms and supervisors engaged in LBP activities.

• Federal agencies that own residential property (NAICS code 92511, 92811).

• Property owners, and property owners that receive assistance through Federal

housing programs (NAICS code 531110, 531311).

B. What is the Agency's authority for taking this action?

EPA is proposing this rule under sections 401, 402, 403, and 404 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 et seq., as amended by Title X of the Housing and Community Development Act of 1992 (also known as the Residential Lead-Based Paint Hazard Reduction Act of 1992 or "Title X") (Pub. L. 102–550) (Ref. 1). TSCA section 403 (15 U.S.C. 2683) mandates EPA to identify LBP hazards for purposes of administering Title X and TSCA Title IV. Under TSCA section 401 (15 U.S.C. 2681), LBP hazards are defined as conditions of LBP and lead-contaminated dust and soil that "would result in adverse human health effects," and lead-contaminated dust is defined as "surface dust in residential dwellings" that contains lead in excess of levels determined "to pose a threat of adverse health effects…." As defined in TSCA section 401 (15 U.S.C. 2681(9)), LBP means:

> "paint or other surface coatings that contain lead in excess of 1.0 milligrams per centimeter squared or 0.5 percent by weight or (A) in the case of paint or other surface coatings on target housing, such lower level as may be established by the Secretary of [HUD], as defined in section 4822(c) of Title 42, or (B) in the case of any other paint or surface coatings, such other level as may be established by the Administrator [of EPA]."

The amendments to the regulations on LBP activities are being proposed pursuant to TSCA section 402 (15 U.S.C 2682). The amendments to the regulations on the authorization of State and Tribal Programs are being proposed pursuant to TSCA section 404 (15 U.S.C. 2684).

This proposed rule is being issued in compliance with the December 27, 2017 decision ("Opinion") of the Ninth Circuit Court of Appeals, and the subsequent March 26, 2018 order that directed the EPA "to issue a proposed rule within ninety (90) days from the

filed date of this order" (Ref. 2) (Ref. 3).

C. What action is the Agency taking?

EPA established dust-lead hazard standards (DLHS) of 40 μg/ft^2 for floors and 250 μg/ft^2 for window sills in a final rule entitled, "Identification of Dangerous Levels of Lead." See 66 FR 1206, January 5, 2001, also known as the LBP Hazards Rule (Ref. 4). EPA is proposing to amend the DLHS set by the LBP Hazards Rule to lower the DLHS for floor dust to 10 μg/ft^2 and to lower the DLHS for window sill dust to 100 μg/ft^2. EPA is requesting comment on the achievability and appropriateness of the proposed DLHS. EPA is requesting comments on all aspects of this proposal, including any options presented in EPA's Technical Support Document that accompanies this proposal (Ref. 5), including taking comment on keeping the DLHS at the current levels.

EPA and HUD adopted the statutory definition of LBP in a joint final rule entitled, "Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing." See 61 FR 9064, March 6, 1996, also known as the Disclosure Rule (Ref. 6). EPA is proposing no changes to the current definition of LBP due to insufficient information to support such a change.

D. Why is the Agency taking this action?

Reducing childhood lead exposure is an EPA priority, and EPA is collaborating with our federal partners to reduce lead exposures and to explore ways to increase our relationships and partnerships with States, Tribes, and localities. EPA Administrator Scott Pruitt hosted a meeting of principals from the 17 federal departments and agencies on the President's Task Force on Environmental Health Risks and Safety Risks to Children in February 2018. At the meeting, the Task Force members committed to make addressing

childhood lead exposure a priority and to develop a federal strategy to reduce childhood lead exposures. Today's proposal is a component of EPA's prioritizing the important issue of childhood lead exposure.

In the 2001 final rule that set the initial hazard standards under TSCA section 403, EPA examined the health effects of various dust-lead loadings, and analyzed those values against issues of practicality to determine the appropriate standards, in accordance with the statute. At that time, the Centers for Disease Control and Prevention (CDC) identified a test result of 10 µg/dL of lead in blood or higher in children as a "level of concern". Based on the available science at the time, EPA explained that health effects at blood lead levels (BLLs) lower than 10 µg/dL were "less well substantiated." Further, the Agency acknowledged that the standards were "based on the best science available to the Agency," and if new data were to become available, EPA would "consider changing the standards to reflect these data." (Ref. 4)

New data have become available since the 2001 final rule that indicates that health risks exist at lower BLLs than previously recognized. The CDC now considers that no safe BLL in children has been identified (Ref. 7), and is no longer using the term "level of concern" and is instead using the reference value to identify children who have been exposed to lead and who should undergo case management (Ref. 7). In 2012, CDC established a blood lead "reference level" as a benchmark for case management (especially assessment of sources of lead in their environment and follow up BLL testing). The reference level is based on the 97.5th percentile of the U.S. population distribution of BLLs in children ages 1-5 from the 2007-2008 and 2009-2010 National Health and Nutrition Examination Surveys (Ref. 8).

Current best available science, which, as indicated above, has evolved considerably

since 2001, informs EPA's understanding of the relationship between exposures to dust-lead loadings, blood lead levels, and risk of adverse human health effects. This is summarized in the Integrated Science Assessment for Lead, ("Lead ISA") (Ref. 9), which EPA released in June 2013, and the National Toxicology Program (NTP) Monograph on the Health Effects of Low-Level Lead, which was released by the Department of Human Health and Services in June 2012 (Ref. 10). The Lead ISA is a synthesis and evaluation of policy-relevant science and includes an analysis of the health effects of BLLs lower than 10 μg/dL. These effects include cognitive function decrements in children (Ref. 9).

The NTP, in 2012, completed an evaluation of existing data to summarize the scientific evidence regarding health effects associated with low-level lead exposure as indicated by BLLs less than 10 μg/dL. The evaluation specifically focused on the life stage (childhood, adulthood) associated with these health effects, as well as on epidemiological evidence at BLLs less than 10 μg/dL, because health effects at higher BLLs are well-established. The NTP concluded that there is sufficient evidence for adverse health effects in children and adults at BLLs less than 10 μg/dL, and less than 5 μg/dL. In children, there is sufficient evidence that BLLs less than 5 μg/dL are associated with increased diagnoses of attention-related behavioral problems, greater incidence of problem behaviors, and decreased cognitive performance. There is limited evidence that BLLs less than 5 μg/dL are associated with delayed puberty and decreased kidney function in children 12 years of age and older. Additionally, the NTP concluded that there is sufficient evidence that BLLs less than 10 μg/dL are associated with delayed puberty, decreased hearing, and reduced post-natal growth (Ref. 10).

Since 2001, EPA has worked collaboratively with other federal partners to promote

further understanding of the technical aspects of rules in place to reduce exposures to dangerous levels of lead. EPA collaborated with HUD to develop the Lead Hazard Control Clearance Survey to examine whether HUD's Office of Lead Hazard Control and Healthy Homes (OLHCHH) Lead Hazard Control (LHC) grantees could achieve dust-lead clearance levels below the current standards. Although this proposed rule does not address clearance levels directly, EPA intends to review the clearance levels at a later date. The survey is still important to this rulemaking because EPA does not want to set a standard that cannot be reliably achieved using existing technology. The survey concluded that "a reduction in the federal clearance standard for floors from 40 μg/ft^2 to 10 μg/ft^2, [and] a reduction in the federal clearance standard for windowsills from 250 μg/ft^2 to 100 μg/ft^2 … are all technically feasible using the methods currently employed by OLHCHH LHC grantees to prepare for clearance." The survey was completed in October 2015 (Ref. 11).

E. What are the estimated incremental impacts of this action?

EPA has prepared an Economic Analysis (EA) of the potential incremental impacts associated with this rulemaking (Ref. 12) on a subset of target housing and child-occupied facilities, which is available in the docket. The analysis estimates incremental costs and benefits for two categories of events: (1) where dust-lead testing occurs to comply with HUD's Lead-Safe Housing Rule and (2) where dust-lead testing occurs in response to testing that detects an elevated blood lead level in a child. The following is a brief outline of the estimated incremental impacts of this rulemaking.

- *Benefits*. This rule would reduce exposure to lead, resulting in benefits from avoided adverse health effects. For the subset of adverse health effects where the results were quantified, the estimated annualized benefits are $317 million to $2.24 billion per year using

a 3% discount rate, and $68 million to $479 million using a 7% discount rate. There are additional unquantified benefits due to other avoided adverse health effects in children, including attention-related behavioral problems, greater incidence of problem behaviors, decreased cognitive performance, reduced post-natal growth, delayed puberty and decreased kidney function (Ref. 10).

- *Costs*. This rule is estimated to result in costs of $66 million to $119 million per year.

- *Small entity impacts*. This rule would impact 39,000 to 44,000 small businesses; 38,000 to 42,000 have cost impacts less than 1% of revenues, 1,000 to 2,000 have impacts between 1% and 3%, and approximately 100 have impacts greater than 3% of revenues.

- *Environmental Justice and Protection of Children*. This rule would increase the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population or children.

- *Effects on State, local, and Tribal governments*. The rule would not have any significant or unique effects on small governments, or Federalism or Tribal implications.

F. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment

that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. Health Effects

Lead exposure impacts individuals of all ages, but it is especially harmful to children (Ref. 13) (Ref. 14) (Ref. 15). Ingestion of lead-contaminated soil and dust is a major

contributor to BLLs in children (Ref. 16) (Ref. 17). Infants and young children can be more highly exposed to lead because they often put their hands and other objects that can have lead from dust or soil on them into their mouths (Ref. 15). As mentioned elsewhere in this proposal, data evaluated by the NTP demonstrates that there is sufficient evidence to conclude that there are adverse health effects associated with low-level lead exposure; there is sufficient evidence that, in children, BLLs less than 5 μg/dL are associated with increased diagnoses of attention-related behavioral problems, greater incidence of problem behaviors, and decreased cognitive performance (Ref. 10). For further information about health effects and lead exposure, see the Lead ISA (Ref. 9).

B. Federal Actions to Reduce Lead Exposures

In 1992, Congress enacted Title X of the Housing and Community Development Act (also known as the Residential Lead-Based Paint Hazard Reduction Act of 1992 or Title X) (Ref. 1) in an effort to eliminate LBP hazards. Section 1018 of Title X required EPA and HUD to promulgate joint regulations for disclosure of any known LBP or any known LBP hazards in target housing offered for sale or lease (known as the Disclosure Rule) (Ref. 6). ("Target housing" is defined in section 401(17) of TSCA, 15 U.S.C. 2681(17)). On March 6, 1996, the Disclosure Rule was codified at 40 CFR 745, subpart F, and requires information disclosure activities before a purchaser or lessee is obligated under a contract to purchase or lease target housing.

Title X amended TSCA to add a new subchapter entitled "Title IV—Lead Exposure Reduction." As defined in TSCA section 401 (15 U.S.C. 2681(9)), LBP means:

> "paint or other surface coatings that contain lead in excess of 1.0 milligrams per centimeter squared or 0.5 percent by weight or (A) in the case of paint or other surface coatings on target housing, such lower level as may be established by the Secretary of [HUD], as defined in section 4822(c) of Title

> 42, or (B) in the case of any other paint or surface coatings, such other level as may be established by the Administrator [of EPA].”

This definition was codified as part of the Disclosure Rule (Ref. 6) at 40 CFR 745, subpart F, and as part of the Lead-based Paint Activities Rule (Ref. 18) at 40 CFR 745, subpart L.

TSCA section 402(a) directs EPA to promulgate regulations covering LBP activities to ensure persons performing these activities are properly trained, that training programs are accredited, and that contractors performing these activities are certified. On August 29, 1996, EPA promulgated final regulations under TSCA section 402(a) that govern LBP inspections, risk assessments, and abatements in target housing and child-occupied facilities (COFs) (also referred to as the LBP Activities Rule, codified at 40 CFR 745, subpart L) (Ref. 18). The definition of “child-occupied facility” is codified at 40 CFR 745.223 for purposes of LBP activities. Regulations promulgated under TSCA section 402(a) contain standards for performing LBP activities, taking into account reliability, effectiveness, and safety.

TSCA section 402(c)(3) directs EPA to promulgate regulations covering renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create LBP hazards. EPA promulgated final regulations for target housing and COFs in the Lead Renovation, Repair and Painting Rule, under TSCA section 402(c)(3) on April 22, 2008 (also referred to as the RRP Rule, codified at 40 CFR 745, subpart E) (Ref. 19). The rule was amended in 2010 (75 FR 24802) (Ref. 20) to eliminate a provision for contractors to opt-out of prescribed work practices and in 2011 (76 FR 47918) (Ref. 21) to affirm the work practice requirements for cleaning verification of renovated or repaired spaces, among other things. For further information regarding lead and its health effects, and federal actions taken to eliminate LBP hazards in housing, see the background section of the RRP Rule.

TSCA section 403 is a related authority to carry out responsibilities for addressing LBP hazards under the Disclosure and LBP Activities Rules. Section 403 required EPA to promulgate regulations that "identify … lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil" for purposes of TSCA Title IV and the Residential Lead-Based Paint Hazard Reduction Act of 1992. LBP hazards, under TSCA section 401, are defined as conditions of LBP and lead-contaminated dust and soil that "would result" in adverse human health effects (15 U.S.C. 2681(10)). TSCA section 401 defines lead-contaminated dust as "surface dust in residential dwellings" that contains lead in excess of levels determined "to pose a threat of adverse health effects" (15 U.S.C. 2681(11)). On January 5, 2001, EPA promulgated a final rule under TSCA sections 402 and 403 called the LBP Hazards Rule (Ref. 4). The standards established under TSCA section 403 are used to calibrate activities carried out under TSCA section 402. As such, the utility of these standards should be considered in the context of the activities to which they are applied.

Pursuant to TSCA section 404, provisions were made for interested States, territories, and Tribes to apply for and receive authorization to administer their own LBP Activities and RRP programs. Requirements applicable to State, territorial, and Tribal programs are codified in 40 CFR 745, subpart Q. As stated elsewhere in this document, EPA's regulations are intended to reduce exposures and to identify and mitigate hazardous levels of lead. Authorized programs must be "at least as protective of human health and the environment as the corresponding Federal program," and must provide for "adequate enforcement." See 40 CFR 745.324(e)(2).

HUD's Lead Safe Housing Rule (LSHR) is codified in 24 CFR 35, subparts B through R. The LSHR implements sections 1012 and 1013 of Title X. Under Title X, HUD

has specific authority to control LBP and LBP hazards in federally-assisted target housing. The LSHR aims in part to ensure that federally-owned or federally-assisted target housing is free of LBP hazards (Ref. 22). Under the LSHR, when a child under age six (6) with an elevated blood lead level (EBLL) is identified, the "designated party" and/or the housing owner shall undertake certain actions.

HUD amended the LSHR in 2017, lowering its standard for identifying children with EBLLs from 20 μg/dL to 5 μg/dL, aligning its standard with CDC's reference level. The amendments also included revising HUD's "Environmental Investigation Blood Lead Level" (EIBLL) to the EBLL, changing the level of investigation required for a housing unit of a child with an EBLL to an "environmental investigation" and adding a requirement for testing in other covered units when a child is identified in a multiunit property. HUD may revisit and revise the agency's EBLL via the notice and comment process, as provided by the definition of EBLL in the amended rule, if it is appropriate to do so in order to align with future changes to CDC's reference level. (Ref. 22).

C. Applicability and Uses of the DLHS

The DLHS reviewed in this regulation support the Lead-based Paint Activities and Disclosure programs, and apply to target housing (i.e., most pre-1978 housing) and COFs (pre-1978 non-residential properties where children under the age of 6 spend a significant amount of time such as daycare centers and kindergartens). Apart from COFs, no other public and commercial buildings are covered by this rule. For further background on the types of buildings to which lead program rules apply, refer to the proposed and final LBP Hazards Rule (Ref. 4).

Within the scope of Title X, the DLHS support and implement major provisions of

the statute. They were incorporated into the requirements and risk assessment work practice standards in the LBP Activities Rule; the relationship between post-abatement clearance and the DLHS is discussed in further detail elsewhere in this proposal. The DLHS provide the basis for risk assessors to determine whether LBP hazards are present. The objective of a risk assessment is to determine, and then report, the existence, nature, severity, and location of LBP hazards in residential dwellings and COFs through an on-site investigation. If LBP hazards are found, the risk assessor will also identify acceptable options for controlling the hazards in each property. These options should allow the property owner to make an informed decision about what actions should be taken to protect the health of current and future residents. Risk assessments can only be performed by certified risk assessors.

The risk assessment entails both a visual assessment and collection of environmental samples. The environmental samples include, among other things, dust samples from floors and window sills which are sent to a laboratory for analysis. When the lab results are received, the risk assessor compares them to the DLHS. If the dust-lead loadings from the samples are above the applicable DLHS, then a hazard is present. Any hazards found are listed in a report prepared for the property owner by the risk assessor.

For the Disclosure Rule under section 1018 of Title X (42 U.S.C. 4852d), EPA and HUD have jointly developed regulations requiring a seller or lessor of most pre-1978 housing to disclose the presence of any known LBP and LBP hazards to the purchaser or lessee (24 CFR 35, subpart A; 40 CFR 745, subpart F). Under these regulations, the seller or lessor also must provide the purchaser or lessee any available records or reports “pertaining to” LBP, LBP hazards and/or any lead hazard evaluative reports available to the seller or lessor (40 CFR 745.107(a)(4)). Accordingly, if a seller or lessor has a report showing lead is present in

levels that would not constitute a hazard, that report must also be disclosed. Thus, disclosure is required under section 1018 even if dust and soil levels are less than the applicable hazard standard. EPA notes, however, that with respect only to leases of target housing, disclosure is not required in the limited circumstance where the housing has been found to be LBP free by a certified inspector (24 CFR 35.82; 40 CFR 745.101).

D. Limitations of the DLHS

The proposed standards are intended to identify dust-lead hazards when LBP risk assessments are performed. These standards, as were those established in 2001, are for the purposes of Title X and TSCA Title IV, and therefore they do not apply to housing and COFs built during or after 1978, nor do they apply to pre-1978 housing that does not meet the definition of target housing. See 40 CFR 745.61. These standards cannot be used to identify housing that is free from risks from exposure to lead, as risks are dependent on many factors. For instance, the physical condition of a property that contains LBP may change over time, resulting in an increased risk of exposure. If one chooses to apply the DLHS to situations beyond the scope of Title X, care must be taken to ensure that the action taken in such settings is appropriate to the circumstances presented in that situation, and that the action is adequate to provide any necessary protection for children exposed.

The DLHS do not require the owners of properties covered by this proposed rule to evaluate their properties for the presence of dust-lead hazards, or to take action if dust-lead hazards are identified. Although these regulations do not compel specific actions to address identified hazards, these standards are incorporated into certain requirements mandated by State, Federal, Tribal, and local governments. EPA acknowledges that if the proposed DLHS were set too low, the effectiveness of these programs may be limited since resources for

hazard mitigation would be distributed more broadly, diverting them from situations that present more serious risks. However, EPA does not believe that the levels proposed today constrict these programs, considering the demonstrated achievability of these levels (Ref. 11). As such, these standards are appropriate for incorporation into the various assessment and hazard control activities to which they apply.

E. Administrative Petition and Litigation

On August 10, 2009, EPA received an administrative petition from several environmental and public health advocacy groups requesting that EPA amend regulations issued under Title IV of TSCA (Sierra Club et al. 2009) (Ref. 23). The petitioners requested that EPA lower the Agency's DLHS issued pursuant to section 403 of TSCA, and the dust-lead clearance levels issued pursuant to section 402 of TSCA, from 40 μg/ft^2 to 10 μg/ft^2 or less for floors, and from 250 μg/ft^2 to 100 μg/ft^2 or less for window sills; and to lower the definition of LBP pursuant to section 401 of TSCA from 1 mg/cm^2 and 0.5 percent by weight, to 0.06 percent by weight with a corresponding reduction in units of mg/cm^2.

On October 22, 2009, EPA responded to this petition pursuant to section 553(e) of the Administrative Procedure Act (5 U.S.C. 553(e)) (EPA 2009) (Ref. 24). EPA agreed to commence an appropriate proceeding on the DLHS and the definition of LBP in response to the petition, but stated that it did not commit to a particular schedule or to a particular outcome.

In August 2016, administrative petitioners – joined by additional citizen groups – filed a petition for writ of mandamus in the Ninth Circuit Court of Appeals, seeking a court order finding that EPA had unreasonably delayed in promulgating a rule to update the DLHS and the definition of LBP under TSCA and directing EPA to promulgate a proposed rule

within 90 days, and to finalize a rule within six months. On December 27, 2017, a panel majority of the Ninth Circuit granted the writ of mandamus and ordered that EPA (1) issue a proposed rule within ninety days of the date the decision becomes final and (2) issue a final rule one year thereafter (Ref. 2). On March 26, 2018, the Panel granted EPA's Motion for Clarification, specifying that the proposed rule was due ninety days from the date of that order (Ref. 3).

EPA is issuing this proposed rule in compliance with the Court's order. Notably, the Court's majority decision suggested that EPA had already determined that amending these regulations was necessary pursuant to TSCA (15 U.S.C. section 2687). However, EPA stated in its 2009 petition response that "the current hazard standards *may not* be sufficiently protective" (Ref. 24) (emphasis added). With regard to the definition of LBP, EPA had not even opined that the definition may not be sufficiently protective. Rather, throughout the litigation, EPA maintained that it would consider whether revision of the definition was appropriate. Also, the sufficiency of the standards was not at issue, as this mandamus petition was about timing, not substance and EPA had not previously conducted the analyses required to reach a conclusion under the statutory standard. It was not until EPA conducted its own analyses – during this rulemaking process – that it was in a position to express the preliminary conclusions that are set forward in this proposal.

III. Proposed Action

EPA is proposing to lower the DLHS for floors from 40 µg/ft^2 to 10 µg/ft^2. EPA is proposing to lower the DLHS for window sills from 250 µg/ft^2 to 100 µg/ft^2.

EPA is proposing no changes to the current definition of LBP due to insufficient information to support such a change.

A. Dust-Lead Hazard Standards.

1. Approach for reviewing the dust-lead hazard standards. As EPA explained in the 2001 hazard standards rulemaking (66 FR 1206, 1207), one of the underlying principles of Title X is to move the focus of public and private sector decision makers away from the mere presence of LBP, to the presence of LBP hazards, for which more substantive action should be undertaken to control exposures, especially to young children. Since there are many sources of lead exposure (e.g. air, water, diet, background levels of lead), and since, under TSCA Title IV, EPA may only account for risks associated with paint, dust and soil, EPA continues to believe that non-zero hazard standards are appropriate.

Based on the language of sections 401, 402, and 403 of TSCA and the purposes of Title X and its legislative history, EPA continues to believe that it is a reasonable exercise of its discretion to set hazard standards based on consideration of the potential for risk reduction and whether such actions are achievable, and with consideration given to the existing programs aimed at achieving such reductions. This proposal is informed by the achievability of these standards in relation to their application in lead risk reduction programs. These considerations will vary within different regulatory programs.

In the 2001 LBP Hazards Rule, EPA first determined the lowest candidate DLHS by using a 1-5% probability of an individual child developing a BLL of 10 µg/dL. EPA then took a pragmatic approach by looking at numerous factors affected by the candidate standards and prioritized protection from the greatest lead risks so as not to dilute intervention resources.

To develop this current proposal, EPA evaluated the relationship between dust-lead levels and children's health, and considered the achievability of the DLHS given the

relationship between standards established under TSCA section 403 and the application of those standards in lead risk reduction programs. Consistent with the establishment of the 2001 DLHS, EPA believes national standards are still an appropriate regulatory approach because they facilitate implementation and decrease uncertainty within the regulated community. For further information, see the LBP Hazards Rule (Ref. 4).

EPA's hazard standards should not be considered in isolation, but must be contemplated along with the Agency's actions to address lead in other media. It is anticipated that this proposal, especially in conjunction with other federal actions on, would result in better health outcomes for children. As described elsewhere in this proposal, scientific advances made since the promulgation of the 2001 rule clearly demonstrate that exposure to low levels of lead result in adverse health effects. Moreover, since CDC has stated that no safe level of lead in blood has been identified, the reductions in children's BLLs as a result of this rule would help reduce the risk of adverse cognitive and developmental effects in children.

2. Technical Analyses and Standard Selection. The analyses that EPA developed to inform this regulation were specifically designed to model potential health risks that might accrue to the subpopulation, children living in pre-1940 and pre-1978 housing, impacted by this proposal and the specific regulatory decision under consideration (dust-lead hazard standards). As described in EPA's Technical Support Document (TSD) that accompanies this proposal, EPA notes that different program offices estimate exposures for different populations, different media, and under different statutory requirements and thus different models or parameters may be a better fit for their purpose. As such, the approach and modeling parameters chosen for this rulemaking should not necessarily be construed as

appropriate for or consistent with the goals of other EPA programs (Ref. 5).

When interpreting the results of Integrated Exposure Uptake Biokinetic (IEUBK) modeling, it is important to recognize that the IEUBK was developed, calibrated and validated for site-specific risk assessments. The model and input parameters have been the subject of multiple Science Advisory Board Reviews, workshops and publications in the peer reviewed literature (Ref. 5). EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) determined that adjustments to the input parameters used for site-specific evaluations would be desirable to better reflect considerations specific to this national rulemaking. OCSPP's adjustments were made to support this rulemaking based on peer-reviewed data sources such as EPA's Exposure Factors Handbook and analysis for EPA's Office of Water (Ref. 5). While the agency believes that these adjustments are appropriate to support this rulemaking, this rulemaking and its supporting analyses should not be interpreted to recommend adjustments that vary from EPA's Office of Land and Emergency Management's IEUBK guidance for site-specific analyses.

Reducing childhood lead exposure is an EPA priority, and today's proposal is one component of EPA's broad effort to reduce children's exposure to lead. While no safe level of lead in blood has been identified (Ref. 7), the reductions in children's blood-lead levels resulting from this rule are expected to reduce the risk of adverse cognitive and developmental effects in children. TSCA Section 403 required EPA to promulgate regulations that "identify … lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil" for purposes of TSCA Title IV and the Residential Lead-Based Paint Hazard Reduction Act of 1992. LBP hazards, under TSCA section 401, are defined as conditions of LBP and lead-contaminated dust and soil that "would result" in adverse human

health effects (15 U.S.C. 2681(10)). TSCA section 401 defines lead-contaminated dust as "surface dust in residential dwellings" that contains lead in excess of levels determined "to pose a threat of adverse health effects" (15 U.S.C. 2681(11)).

In the TSD, EPA models the risk of adverse health effects associated with lead dust exposures at differing potential candidate standards for dust levels (17 scenarios) in children living in pre-1940 and pre-1978 housing, as well as associated potential health effects in this subpopulation. Candidate standards that prioritize reducing floor dust loadings over sill dust loadings have the biggest impact on exposure because of the greater likelihood and magnitude of children's exposure (floors take up more square footage of the housing unit and children spend more of their time in contact with the floor rather than the sills.) For example, a candidate standard of 40 μg/ft^2 for floors and 100 μg/ft^2 for window sills is likely to be less effective than a standard of 10 or 20 μg/ft^2 for floors and 250 μg/ft^2 for window sills.

EPA reported potential effects at the 50th and 97.5th percentile of the affected subpopulation, and made comparisons with multiple metrics, in relation to the CDC reference level of 5 μg/dL and the previous CDC level of concern of 10 μg/dL. Specifically, EPA evaluated which candidate dust-lead standards could approximate 97.5% of the modeled subpopulation of children being below the CDC reference level. EPA's modeling showed that this value was only reached at background dust-lead levels. However, modeling did show that at dust-lead levels of 10 μg/ft^2 and 100 μg/ft^2 on floors and window sills, respectively, greater than 90% of the modeled children were below the CDC reference level, while at the current standards, about 80% of children were below this level. EPA feels more confident in potential health gains from candidate standards that compare favorably on

multiple metrics. Outcome metrics and comparison values are summarized at tables 7-1 and 7-2 of the TSD.

As expected, as the dust-lead levels were decreased, incremental decreases to BLL and adverse health effects were seen at all points below the current standard. Furthermore, the non-linear nature of the modeled relationships discussed in the TSD mean that greater changes were seen with greater incremental reductions and smaller changes were seen when changes were closer to the original dust-lead standard. These trends, in combination with the sources of uncertainty in the modeling (discussed in Chapter 8 of the TSD) and the fact that the uncertainty is propagated through the Economic Analysis (EA) that relies on the TSD, make it difficult to identify a clear cut-point or a clear alternative for consideration. EPA does note, however, that the results of the EA show that in each of the scenarios examined the quantified benefits outweighed the quantified costs. In selecting a primary proposal, EPA considers that the HUD study shows that for many of the LHC grantees that use existing lead hazard control practices, dust-lead levels as low as 10 $\mu g/ft^2$ and 100 $\mu g/ft^2$ on floors and window sills, respectively, were achievable.

EPA is proposing standards of 10 $\mu g/ft^2$ and 100 $\mu g/ft^2$ for floors and window sills respectively. Based on the experiences of the LHC grantees EPA has tentatively concluded that the petitioned candidate standard of 10 $\mu g/ft^2$ on floors and 100 $\mu g/ft^2$ on window sills is achievable. EPA also notes that all candidate standards evaluated in EPA's economic analysis have positive net benefits and the petitioned candidate standard generally had the highest net benefits across the scenarios analyzed. In choosing the proposed standards, EPA gave significant weight to both the health outcomes identified in the TSD and technically achievability, since these standards will likely be applied in certain lead risk reduction

programs, and considering achievability is consistent with the overall statutory goal of decreasing lead exposures to children. However, all standards more stringent than the current standard incrementally improve health outcomes above the existing standards, and the differences among candidate standards are small (see TSD Table 7-2). EPA notes that no non-zero lead level, including background, can be shown to eliminate health risk entirely, so it is appropriate for EPA to consider factors beyond health effects only in choosing the standard. Also, achievability itself is not a bright line concept; in general, as standards decrease, more and more target housing units will find it challenging to achieve dust lead levels below the standard. Practicability is an important component of achievability.

While EPA is proposing standards of 10 µg/ft^2 and 100 µg/ft^2 for floors and window sills respectively, EPA is encouraging public comment on the full range of candidate standards analyzed in the TSD as alternatives to the proposal, including the option not to change the current standard. EPA is also specifically requesting comment on an option that would reduce the floor dust standard but leave the sill dust standard unchanged (e.g., 20 µg/ft^2 for floors and 250 µg/ft^2 for window sills, or 10 µg/ft^2 for floors and 250 µg/ft^2 for window sills), since reducing floor dust lead has the greatest impact on children's health. Comments are also sought on EPA's tentative conclusion that a standard of 10 µg/ft^2 and 100 µg/ft^2 on floors and window sills is achievable, and what changes, if any, including laboratory analytic standard would be necessary to achieve that standard. EPA particularly welcomes data on the achievability of any of the candidate standards analyzed for this proposal.

As mentioned in Unit I.D., EPA worked with HUD OLHCHH to survey the office's LHC grantees to assess the achievability of candidate DLHS (Ref. 11). Survey results

showed that reductions in clearance levels to 10 μg/ft^2 of lead in floor dust and to 100 μg/ft^2 of lead in dust on window sills were shown to be technically achievable using existing cleaning practices. As explained in the survey final report, clearance testing results were collected from 1,552 housing units and included 7,211 floor samples and 4,893 window sill samples. The data were analyzed to determine the percentage of samples cleared at or below various levels. For floors, 72% of samples showed dust-lead levels at or below 5 μg/ft^2, 85% were at or below 10 μg/ft^2, 90% were at or below 15 μg/ft^2, and 94% were at or below 20 μg/ft^2. For window sills, 87% of samples showed dust-lead levels at or below 40 μg/ft^2, 91% were at or below 60 μg/ft^2, 96% were at or below 80 μg/ft^2, and 97% were at or below 100 μg/ft^2 (Ref. 11).

The specific purpose of the LHC programs is to assist "states, cities, counties/parishes, Native American Tribes, or other units of local government in undertaking comprehensive programs to identify and control lead-based paint hazards in eligible privately owned rental or owner-occupied housing populations." (Ref. 25). Funded activities must be conducted by LBP certified individuals (Ref. 25). Since most of the LHC grantees use commercial firms in their area, HUD OLHCHH believes that the grantees are conducting a large percentage of these activities and are therefore representative of the regulated community.

Ninety-eight of those grantees completed the survey, giving information from housing units in which lead hazard control activities took place from 2010 through 2012, for a total dataset of 1,552 housing units (Ref. 11). Of those housing units, "[a]lmost half were detached single family homes, while less than 20% were apartments. Almost all were built before 1960, and over three quarters before 1940." (Ref. 11). "The most common methods

used included various types of cleaning as well as sealing of floors, [and] sills… Overlaying or replacing flooring… were less common. It was further found that the stated reductions in… standards for floors and sills are generally feasible using the more common methods (cleaning and sealing) exclusively." (Ref. 11).

Section 402(a) of TSCA requires EPA to promulgate regulations that "shall contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety." To that end, as part of the Lead-based Paint Hazards Rule, EPA established clearance levels as "40 $\mu g/ft^2$ for floors and 250 $\mu g/ft^2$ for window sills," the same as the DLHS in that rulemaking. See 40 CFR 745.227(e)(8)(viii). After conducting LBP abatements, EPA's regulations require a certified inspector or risk assessor to sample the abated area. If the sample results show dust-lead loadings equal to or exceeding the applicable clearance level, "the components represented by the failed sample shall be recleaned and retested." See 40 CFR 745.227(e)(8)(vii). In other words, the abatement is not complete until the dust-lead loadings in the work area are below the clearance levels.

EPA is not proposing to change the post-abatement clearance levels in 40 CFR 745, subpart L today, but EPA recognizes that, in other lead regulatory programs, the DLHS are tightly linked to post-abatement clearance. As discussed elsewhere in this proposal, HUD uses the standards proposed here in their clearance regulations and lead hazard control grant requirements. EPA considered how this approach would impact partner agencies when evaluating candidate standards, and selected standards that accord with achievability studies and partner program implementation. While EPA is not proposing to change the clearance standards today, EPA does intend to review the clearance levels at a later date.

In addition to ensuring that stakeholders can achieve the lower dust-lead loadings

proposed in this rule, it is important to assess whether those dust-lead loadings are reliably detectable by laboratories. The National Lead Laboratory Accreditation Program (NLLAP) is an EPA program that defines the minimum requirements and abilities that a laboratory must meet to attain EPA recognition as an accredited lead testing laboratory. EPA established NLLAP to recognize laboratories that demonstrate the ability to accurately analyze paint chips, dust, or soil samples for lead. If, as a result of lowering the DLHS, laboratories recognized by the NLLAP program were unable to accurately measure dust samples at those lower levels, then stakeholders would be unable to use those laboratories in conducting activities required by EPA's LBP program. Notably, as mentioned elsewhere in this document, HUD has already required these lower dust-lead levels of their OLHCHH's lead hazard control grantees in a recent policy guidance revision (Ref. 26). All the laboratories used by the approximately 120 lead hazard control grantees (the number varies over time as grants begin and end) have established the required minimum reporting limit and minimum detection limit for the dust-lead loadings on floors and for window sills proposed today. EPA acknowledges that the laboratories used by OLHCHH's lead hazard control grantees do not represent all of the laboratories accredited under EPA's NLLAP program. In order to continue to be accredited if the DLHS for floors is reduced, all NLLAP laboratories will need to reach a reporting limit not greater than half of the level established (i.e., 5 $\mu g/ft^2$ for a floor DLHS standard of 10 $\mu g/ft^2$). However, given that 100% of the laboratories used by these grantees were using laboratories with reporting limit not greater 5 $\mu g/ft^2$, there is no technological barrier to reducing the current standard to the petitioned candidate standard. The dust samples analyzed by the laboratories were collected by the grantees. A quantitative review of dust sampling results from 51 grants where clearance was attempted in one of the

housing units treated in the April 13, 2017, to May 14, 2018, period under each grant found that 80% (41) of the units passed floor clearance at HUD's clearance level of <10 μg/ft^2 for these grants on the first attempt. All units that failed floor clearance on the first attempt passed on the second attempt. All (51) of the units passed the window sill clearance at the clearance level of < 100 μg/ft^2 for these grants on the first attempt. The dust-lead sample analyses were conducted by a total of 28 laboratories located in 24 states within a total of 12 laboratory firms. The grants were awarded to 49 state or local governments in 16 states (Ref. 27).

In consideration of the factors discussed in this preamble, EPA is proposing to change the DLHS from 40 μg/ft^2 and 250 μg/ft^2 to 10 μg/ft^2 and 100 μg/ft^2 on floors and window sills, respectively. EPA recognizes that this rulemaking does not address all hazards presented by lead. The DLHS alone cannot solve the lead problem. They are part of a broader program designed to educate the public and raise public awareness, empower and protect consumers, and provide helpful technical information that professionals can use to identify and control lead hazards.

In 2001, EPA concluded that standards that are too stringent may afford less protection to these children by diluting the resources available to address hazards in these communities. While EPA recognizes that BLLs have declined since the promulgation of the 2001 rule and that mitigation costs per child are generally low (see Refs. 8, 12, and 28), this concept is still applicable given BLL trends today. As described in the Key Federal Programs to Reduce Childhood Lead Exposures and Eliminate Associated Health Impacts document, national data suggest disparities persist among communities due to factors such as race, ethnicity, and income (Ref. 17). In 2013-2016, the 95th percentile BLL of children ages 1 to

5 years in families with incomes below poverty level was 3.0 µg/dL (median is 0.9 µg/dL,) and among those in families at or above the poverty level it was 2.1 µg/dL (median is 0.7 µg/dL), a difference that is statistically significant. In 2011-2014, 2.2% of children in families below the poverty level had a BLL at or above 5 µg/dL, compared to 0.6% of children in families at or above the poverty level. The 97.5th percentile in 2013-2016 is 3.3 µg/dL, a slight decrease from the value for 2011-2014 (Ref. 28).

EPA is proposing these new standards to complement other federal actions aimed at reducing lead exposures for all children. EPA also believes that the standards would continue to inform where intervention resources should be directed for children with higher exposures. These are the lowest levels that EPA believes are reliably achievable using existing lead-hazard control practices and that are aligned with the clearance levels required under certain HUD grant programs. As such, these levels provide greater uniformity across the federal government than the other options considered and provide consistency for the regulated and public health communities. EPA is requesting comment on the achievability and appropriateness of the proposed DLHS. EPA also seeks comment on other levels that are described and evaluated in the TSD (Ref. 5) and the EA (Ref. 12), including taking comment on keeping the DLHS at the current levels.

4. Effect of this change on EPA and HUD Programs. a. EPA Risk Assessments. As stated earlier in this preamble, EPA's risk assessment work practice standards provide the basis for risk assessors to determine whether LBP hazards are present in target housing and COFs. As part of a risk assessment, dust samples are taken from floors and window sills to determine if dust-lead levels exceed the hazard standards. Results of the sampling, among other things, are documented in a risk assessment report which is required under the LBP

Activities Rule (Ref. 18). In addition to the sampling results, the report must describe the location and severity of any dust-lead hazards found and describe interim controls or abatement measures needed to address the hazards. Under this proposed rule, risk assessors would compare dust sampling results for floors and window sills to the new, lower DLHS. Sampling results above the new hazard standard would indicate that a dust-lead hazard is present on the surfaces tested. EPA expects that this would result in more hazards being identified in a portion of target housing and COFs that undergo risk assessments. The proposed rule does not change any other risk assessment requirements.

b. EPA-HUD Disclosure Rule. Under the Disclosure Rule (Ref. 6), prospective sellers and lessors of target housing must provide purchasers and renters with a federally approved lead hazard information pamphlet and disclose known LBP and/or LBP hazards. The information disclosure activities are required before a purchaser or renter is obligated under a contract to purchase or lease target housing. Records or reports pertaining to LBP or LBP hazards must be disclosed, including results from dust sampling regardless of whether the level of dust lead is below the hazard standard. For this reason, a lower hazard standard would not result in more information being disclosed because property owners would already be disclosing results that show dust-lead below 40 $\mu g/ft^2$ on floors or below 250 $\mu g/ft^2$ on window sills. However, a lower hazard standard may prompt a different response on the lead disclosure form, i.e., that a lead-based paint hazard is present rather than not, which would occur when a dust-lead level is below the current standard but at or above a lower final standard.

c. Renovation, Repair and Painting (RRP) Rule. To avoid confusion about the applicability of this proposed rule, EPA notes that revising the DLHS will not trigger new

requirements under the existing RRP Rule. The existing RRP work practices are required where LBP is present (or assumed to be present), and are not predicated on dust-lead loadings exceeding the hazard standards. The existing RRP regulations do not require dust sampling prior to or at the conclusion of a renovation and, therefore, will not be directly affected by a change to the DLHS.

d. HUD Requirements for Federally-assisted or Federally-owned housing. Under sections 1012 and 1013 of Title X, HUD established LBP hazard notification, evaluation, and reduction requirements for certain pre-1978 HUD-assisted and federally-owned target housing, known as the Lead Safe Housing Rule (LSHR). See 24 CFR 35, subparts B – R. The programs covered by these requirements range from supportive housing services to foreclosed HUD-insured single-family insured housing to public housing. For programs where hazard evaluation is required, the DLHS provide criteria to risk assessors for identifying LBP hazards in residences covered by these programs. For programs that require abatement of LBP hazards, the DLHS are used to identify residences that contain dust-lead hazards as part of determining where abatement will be necessary.

e. HUD Guidelines. The HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing were developed in 1995 under section 1017 of Title X. They provide detailed, comprehensive, technical information on how to identify LBP hazards in residential housing and COFs, and how to control such hazards safely and efficiently. The Guidelines were revised in 2012 to incorporate new information, technological advances, and new Federal regulations, including EPA's LBP hazard standards. If EPA were to finalize changes in the DLHS, HUD would plan to revise Chapter 5 of the Guidelines on risk assessment and Chapter 15 on clearance based on those changes.

f. LSHR Clearance Requirements. While this proposed rule would not change the clearance levels under EPA's regulations, it would have the effect of changing the clearance levels that apply to hazard reduction activities under HUD's LSHR. The LSHR requires certain hazard reduction activities to be performed in certain federally-owned and assisted target housing including abatements, interim controls, paint stabilization, and ongoing LBP maintenance. Hazard reduction activities are required in this housing when LBP hazards are identified or when maintenance or rehabilitation activities disturb paint known or presumed to be LBP. The LSHR's clearance regulations, 24 CFR 35.1340, specify requirements for clearance of these projects (when they disturb more than de minimis amounts of known or presumed lead-based painted surfaces, as defined in 24 CFR 35.1350(d)), including a visual assessment, dust sampling, submission of samples for analysis for lead in dust, interpretation of sampling results, and preparation of a report. Clearance testing of abatements and non-abatements is required by 24 CFR 35.1340(a) and (b), respectively.

The LSHR's clearance regulations cross-reference different regulatory provisions to establish clearance levels for abatements than for non-abatement activities. The LSHR clearance regulations for both abatements and non-abatement activities, at 24 CFR 35.1340(d), cross-reference the standards, at 24 CFR 35.1320(b), to be used by risk assessors for conducting clearance; in turn, the standards at 24 CFR 35.1320(b) cross-reference EPA's DLHS at 40 CFR 745.227(h). In addition, the LSHR clearance regulations for abatements, at 24 CFR 35.1340(a), which set forth that clearance must be performed in accordance with EPA regulations, cross-reference EPA's clearance standards for abatements at 40 CFR 745.227(e). Currently, the EPA's DLHS and dust-lead clearance standards for abatements are the same, so cross-referencing different EPA regulatory provisions, at 40 CFR 745.227(e)

and (h), has had no effect on hazard reduction activities under the LSHR.

The LSHR clearance regulations for non-abatement activities, at 24 CFR 35.1340(b) do not cross-reference EPA's clearance standards at 40 CFR 745.227(e). Only EPA's DLHS at 40 CFR 745.227(h) are referenced at 24 CFR 1340(d) as the clearance standards for non-abatement activities, because EPA does not have its own clearance standards for them. Accordingly, if this rule is finalized as proposed, non-abatement activities under the LSHR would continue to be cleared using the EPA's DLHS.

EPA's LBP activities regulations on work practice requirements, at 40 CFR 745.65(d), specify that clearance requirements applicable to LBP hazard evaluation and hazard reduction activities are found in both the LSHR, at 24 CFR 35, subpart R, and EPA regulations at 40 CFR 745, subpart L. For abatements covered by both agencies' regulations, the LSHR regulations, at 24 CFR sections 35.145 and 35.1340(a), require clearance levels following abatement of LBP or LBP hazards to be at least as protective as EPA's clearance levels for abatements at 40 CFR 745.227(e).

If this rule is finalized as proposed, EPA's resultant DLHS would be lower than EPA's clearance standards for abatements, and according to HUD, abatements under HUD's LSHR would be cleared using the EPA's DLHS.

B. The Definition of Lead-Based Paint.

As noted in Unit II.D., EPA has neither opined nor concluded that the definition of LBP may not be sufficiently protective. In response to the administrative petition (Ref. 24) and throughout the litigation, EPA maintained that it would consider *whether* revision to the definition of LBP was appropriate. The definition of LBP is incorporated throughout EPA's LBP regulations, and application of this definition is central to how EPA's LBP program

functions. EPA believes that accounting for feasibility and health effects would be appropriate when considering a revision. Given the current, significant data gaps presented below and the new approaches that would need to be devised to address them, EPA lacks sufficient information to conclude that the current definition requires revision or to support any specific proposed change to the definition of LBP. EPA is requesting comment on this proposal, and especially on any new available data on the technical feasibility of a revised definition of LBP or analysis of the relationship between levels of lead in paint, dust and risk of adverse health effects.

1. Scope and applicability of the definition of lead-based paint. The definition of LBP reviewed in this proposal supports the LBP activities regulations, Disclosure regulations, and the RRP regulations, and currently applies to target housing and COFs. The definition of LBP helps LBP inspectors identify where LBP may be located, and helps risk assessors identify where LBP hazards are located and where LBP activities may be appropriate. It is the definition lessors and sellers must consider when disclosing LBP information about their properties, and it is the definition renovators must consider when evaluating applicability of the RRP program.

2. Limitations of the Definition of Lead-Based Paint. The definition of LBP is intended to identify LBP for the purposes of Title X and TSCA Title IV. This definition should not be used to identify paint that poses a risk of lead exposure, as risks are dependent on a number of factors. If one chooses to apply the definition of LBP to situations beyond the scope of Title X, care must be taken to ensure that the action taken in such settings is appropriate to the circumstances presented.

3. Analyses needed to evaluate whether a revision to the definition of LBP is

appropriate. Evaluating whether revising the definition of LBP is appropriate requires analyzing levels of lead in paint that are lower than what was examined previously by EPA and other federal agencies. More information is needed to establish a statistically valid causal relationship between concentrations of lead in paint (lower than the current definition) and dust-lead loadings which cause lead exposure. Additionally, it is important to understand how capabilities among various LBP testing technology would be affected under a possible revision to the definition.

a. Relationship among lead in paint, environmental conditions, and exposure. EPA would need to further explore the availability and application of statistical modeling approaches that establish robust linkages between the concentration of lead in paint below the current definition and floor dust and BLL before EPA could develop a technically supportable proposal to revise the definition of LBP. To that end, EPA is coordinating with HUD to evaluate available data and approaches. Efforts suggest that most available empirical data and modeling approaches are only applicable at or above the current LBP definition (0.5% and 1 mg/cm^2). It should be noted that EPA developed a model to estimate lead-based dust loadings from renovation activities in various renovation scenarios in 2014 and a similar model was developed in 2011 by Cox et al. However, the underlying data that supported EPA's 2014 model for LBP was EPA's 2007 dust study, which included concentrations of lead in paint ranging from 0.8% to 13% by weight. The data that supported Cox et al. 2011 ranged from 0.7 to 13.2 mg/cm^2 (converted to approximately 0.6% to 31% by weight) of lead in paint (Ref. 29) (Ref. 30) (Ref. 31). Given the range of concentrations that support these models are well above the petitioners' requested concentration of lead in paint, there would be significant uncertainty associated with using these models to make predictions regarding

lead in paint at concentrations an order of magnitude below the current definition.

EPA has conducted a preliminary literature search for studies that co-report lead concentrations in paint and dust in order to identify available data to support modeling approaches (Ref. 29). Among other things, EPA is looking to the literature to establish statistically valid associations between LBP and lead in dust. If such an association, appropriate for applications contemplating lead in paint at low concentrations, is found, EPA could use such information to estimate concentrations of lead in paint and household dust. Alternatively, EPA would likely need to consider generation of new data if data or modeling approaches are not identified, since, as discussed elsewhere in this document, EPA believes there is significant uncertainty associated with estimating dust-lead loadings for levels of lead in paint up to an order of magnitude lower than levels in the current definition using the existing models (Ref. 29), Cox et al. (Ref. 30). EPA expects to need to develop an approach to estimate dust-lead from lower levels of lead in paint so that EPA could estimate incremental blood lead changes and associated health effects changes as described in the existing dust-lead approach. This may involve conducting laboratory or field studies to characterize the relationship between LBP and dust-lead at lower levels of lead in paint (<0.5%) (Ref. 29).

b. Feasibility. EPA lacks sufficient information to support a change to the definition of LBP with respect to feasibility. Significant data gaps prevent the Agency from evaluating and subsequently determining that a change to the existing definition is warranted. For instance, it is currently unknown whether portable field technologies utilized in EPA's LBP activities and RRP programs, as well as HUD's LSHR, perform reliably at significantly lower concentrations of lead in paint.

Portable X-ray fluorescence (XRF) LBP analyzers are the primary analytical method for inspections and risk assessments in housing because they can be used to quickly, non-destructively and inexpensively determine if LBP is present on many surfaces. These measurements do not require destructive sampling or paint removal. Renovation firms may also hire inspectors or risk assessors to conduct XRF testing to identify the presence of LBP. When using XRF technology, the instrument exposes the substrate being tested to electromagnetic radiation in the form of X-rays or gamma radiation. In response to radiation, the lead present in the substrate emits energy at a fixed and characteristic level. The emission is called "X-Ray Fluorescence," or XRF (Ref. 32).

XRF Performance Characteristic Sheets (PCS) have been developed by HUD and/or EPA for most commercially available XRF analyzers (XRFs). In order to comport with the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, an XRF instrument that is used for testing paint in target housing or pre-1978 COFs must have a HUD-issued XRF PCS. XRFs must be used in accordance with the manufacturer's instructions and the PCS. The PCS contains information about XRF readings taken on specific substrates, calibration check tolerances, interpretation of XRF readings, and other aspects of the model's performance. For every XRF analyzer evaluated by EPA and/or HUD, the PCS defines acceptable operating specifications and procedures. The ranges where XRF results are positive, negative or inconclusive for LBP, the calibration check tolerances, and other important information needed to ensure accurate results are also included in the PCS. An inspector and risk assessor must follow the XRF PCS for all LBP activities, and only devices with a posted PCS may be used for LBP inspections and risk assessments (Ref. 32).

XRF analyzers and their corresponding PCS sheets were developed to be calibrated

with the current definition of LBP. Therefore, these instruments would need to be re-evaluated to determine the capabilities of each instrument model available on the market to meet a potentially revised definition of LBP, and the corresponding PCS sheet would need to be amended accordingly. If, as a result of a revision to the definition of LBP, the use of XRFs suddenly became unavailable, the effectiveness of the LBP activities regulations would be severely harmed. Since these instruments are the primary analytical method for inspections and risk assessments performed pursuant to the LBP activities regulations, EPA would need to understand how a potential revision to the definition of LBP would affect the ability of the regulated community to use this technology.

When conducting renovations, contractors must determine whether or not their project will involve LBP, and thus fall under the scope of the RRP regulations under 40 CFR 745, subpart E, or in certain jurisdictions, authorized State and Indian Tribal programs under subpart Q (see Unit III.C). Under the RRP rule, renovators have the flexibility to choose among four strategies: use (1) a lead test kit, (2) an XRF instrument, (3) paint chip sampling to indicate whether LBP is present; or (4) assume that LBP is present and follow all the work-practice requirements. For those using lead test kits, only test kits recognized by the EPA can be used for this purpose. EPA-recognized lead test kits used for the RRP program were evaluated through EPA's Environmental Technology Verification (ETV) Program or by the National Institute of Standards and Technology. ETV was a public-private partnership between EPA and nonprofit testing and evaluation organizations that verified the performance of innovative technologies. ETV evaluated the reliability of the technology used for on-site testing of LBP at the regulated level, under controlled conditions in a laboratory. ETV ended operations in early 2014. EPA would need to evaluate lead test kits using ETV-

equivalent testing for a potential revision of the definition of LBP. This would allow EPA to evaluate the reliability of test kits for testing LBP under controlled conditions at levels lower than the current LBP definition, so contractors can continue to use this important tool in compliance with the RRP regulations.

The regulated community uses XRF analyzers for inspections and risk assessments, and lead test kits to determine the presence of LBP during renovations. In consideration of any potential revised definition of LBP, EPA would need to fully understand the repercussions of such a revision on these portable field technologies in order to ensure the technological feasibility of any new revision. The methods EPA would need to employ to do so would involve complex processes that include evaluating the potential ability of XRF analyzers to detect LBP at lower levels than the current definition, the ability to recalibrate PCS sheets for each available model of XRF analyzer, and re-evaluating lead test kits under controlled conditions in a laboratory. EPA currently lacks sufficient information to support such an undertaking.

C. State Authorization.

Pursuant to TSCA section 404, a provision was made for interested States, territories and Tribes to apply for and receive authorization to administer their own LBP Activities programs, as long as their programs are at least as protective of human health and the environment as the Agency's program and provides adequate enforcement. The regulations applicable to State, territorial and Tribal programs are codified at 40 CFR 745, subpart Q. As part of the authorization process, States, territories and Tribes must demonstrate to EPA that they meet the requirements of the LBP Activities Rule. Over time, the Agency may make changes to these requirements. To address the changes proposed in this rule and future

changes to the LBP Activities Rule, the Agency is proposing to require States, territories and Tribes to demonstrate that they meet any new requirements imposed by this rulemaking. The Agency is proposing to provide States, territories and Tribes up to two years to demonstrate that their programs include any new requirements that EPA may promulgate. A State, territory or Tribe would have to indicate that it meets the requirements of the LBP Activities program in its application for authorization or, if already authorized, a report it submits under 40 CFR 745.324(h) no later than two years after the effective date of the new requirements. If an application for authorization has been submitted but not yet approved, the State, territory or Tribe must demonstrate that it meets the new requirements by either amending its application, or in a report it submits under 40 CFR 745.324(h) no later than two years after the effective date of the new requirements. The Agency believes that the proposed requirements allow sufficient time for States, territories and Tribes to demonstrate that their programs contain requirements at least as protective as any new requirements that EPA may promulgate.

IV. Request for Comment

EPA is requesting comment on its proposal to lower the DLHS for floor dust to 10 $\mu g/ft^2$ and for window sill dust to 100 $\mu g/ft^2$. EPA is requesting comment on the achievability and appropriateness of the proposed DLHS in these ranges. EPA is requesting comments on all aspects of this proposal, including all options presented in the EA and the TSD that accompanies this proposal. EPA is requesting comment on whether it has properly characterized the neurodevelopmental effects of lead in children. EPA specifically requests additional studies that support the quantification and monetization of these neurodevelopmental effects in the Agency's analyses. EPA also seeks comment on four other

alternatives discussed in the EA, including maintaining the DLHS at the current levels.

EPA is proposing no changes to the definition of LBP due to insufficient information to support such a change. EPA is requesting comment on this proposal to make no change to the definition of LBP.

EPA is requesting comment on its proposal to provide States, territories and Tribes up to two years to demonstrate that their programs include any new requirements that EPA may promulgate.

EPA is also requesting comment on methods, models and data used in the EA and the TSD that accompany this proposal. (1) The agency provided a preliminary assessment of how this hazard standard may potentially affect other units in target housing and child occupied facilities in the Appendix B of the Economic Analysis. The agency is seeking information—e.g., data, scholarly articles—that will allow the agency to refine this assessment and determine whether the effect on the target housing and child occupied facilities should be included in the primary benefit and cost estimates presented in the analysis. (2) The agency is seeking information that will allow the agency to refine their current approach on assessing uncertainties associated with the benefit and cost estimates. (See page ES-8 of the Executive Summary of the EA for more specific requests).

In addition to the areas on which EPA has specifically requested comment, EPA requests comment on all other aspects of this proposed rule.

V. References

The following is a list of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket,

even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under FOR FURTHER INFORMATION CONTACT.

1. Public Law 102-550, Title X—Housing and Community Development Act, enacted October 28, 1992 (also known as the Residential Lead-Based Paint Hazard Reduction Act of 1992 or "Title X") (42 U.S.C. 4851 *et seq*.).

2. U.S. Court of Appeals for the Ninth Circuit. A Community Voice v. EPA, No. 16-72816, Opinion. December 27, 2017.

3. U.S. Court of Appeals for the Ninth Circuit. A Community Voice v. EPA, No. 16-72816, Order. March 26, 2018.

4. EPA. Lead; Identification of Dangerous Levels of Lead; Final Rule. **Federal Register** (66 FR 1206, January 5, 2001) (FRL–6763–5).

5. EPA Office of Pollution Prevention and Toxics. Technical Support Document for Residential Dust-lead Hazard Standards Rulemaking Approach taken to Estimate Blood Lead Levels and Effects from Exposures to Dust-lead. June 2018.

6. HUD, EPA. Lead; Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing; Final Rule. **Federal Register** (61 FR 9064, March 6, 1996) (FRL–5347–9).

7. CDC. CDC Response to Advisory Committee on Childhood Lead Poisoning Prevention Recommendations in "Low Level Lead Exposure Harms Children: A Renewed Call of Primary Prevention." June 7, 2012. *https://www.cdc.gov/nceh/lead/acclpp/cdc_response_lead_exposure_recs.pdf*.

8. CDC. Blood Lead Levels in Children Aged 1–5 Years — United States,

1999–2010. Morbidity and Mortality Weekly Report, Vol. 62 No. 13, April 5, 2013. *https://www.cdc.gov/mmwr/pdf/wk/mm6213.pdf*.

9. EPA. Integrated Science Assessment (ISA) for Lead (Final Report, Jul 2013). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R-10/075F, 2013. *https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=255721*.

10. HHS, National Toxicology Program. NTP Monograph: Health Effects of Low-Level Lead. 2012. *https://ntp.niehs.nih.gov/ntp/ohat/lead/final/monographhealtheffectslowlevellead_newissn_508.pdf*.

11. HUD Office of Lead Hazard Control and Healthy Homes. Lead Hazard Control Clearance Survey. October 2015. *https://www.hud.gov/sites/documents/CLEARANCESURVEY_24OCT15.PDF*.

12. EPA Office of Pollution Prevention and Toxics. Economic Analysis of the Proposed Rule to Revise the TSCA Dust-lead Hazard Standards. June 2018.

13. CDC. Lead Poisoning in Children (February 2011). *https://www.cdc.gov/healthcommunication/toolstemplates/entertainmented/tips/LeadPoisoningChildren.html*.

14. Agency for Toxic Substances and Disease Registry, Division of Toxicology and Human Health Sciences. Lead – ToxFAQs™ CAS # 7439-92-1, August 24, 2016. *https://www.atsdr.cdc.gov/toxfaqs/tfacts13.pdf*.

15. EPA. Exposure Factors Handbook Chapter 5 Soil and Dust Ingestion (2017 update). *https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=236252*.

16. Zartarian, V., Xue, J., Tornero-Velez, R., & Brown, J. (2017). Children's

Lead Exposure: A Multimedia Modeling Analysis to Guide Public Health Decision-Making. Environmental Health Perspectives, 125(9), 097009-097009. *https://doi.org/10.1289/EHP1605*.

17. President's Task Force on Environmental Health Risks and Safety Risks to Children. Key Federal Programs to Reduce Childhood Lead Exposures and Eliminate Associated Health Impacts. November 2016. *https://ptfceh.niehs.nih.gov/features/assets/files/key_federal_programs_to_reduce_childhood_lead_exposures_and_eliminate_associated_health_impactspresidents_508.pdf*.

18. EPA. Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Final Rule. **Federal Register** (61 FR 45778, August 29, 1996) (FRL–5389–9).

19. EPA. Lead; Renovation, Repair, and Painting Program; Final Rule. **Federal Register** (73 FR 21692, April 22, 2008) (FRL–8355–7).

20. EPA. Lead; Amendment to the Opt-Out and Recordkeeping Provisions in the Renovation, Repair, and Painting Program; Final Rule. **Federal Register** (75 FR 24802, May 6, 2010) (FRL–8823–7).

21. EPA. Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program; Final Rule. **Federal Register** (76 FR 47918, August 5, 2011) (FRL-8881-8).

22. HUD. Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Response to Elevated Blood Lead Levels; Final Rule. **Federal Register** (82 FR 4151, January 13, 2017) (FR–5816–F–02).

23. Sierra Club et al. Letter to Lisa Jackson RE: Citizen Petition to EPA Regarding the Paint and Dust Lead Standards. August 10, 2009.

24. EPA. Letter in response to citizen petition under section 553(e) of the Administrative Procedure Act (5 U.S.C. 553(e)). October 22, 2009.

25. HUD Office of Lead Hazard Control and Healthy Homes. Lead-Based Paint Hazard Reduction. FR-6200-N-12. Section I.A.1. June 19, 2018. *https://www.hud.gov/program_offices/spm/gmomgmt/grantsinfo/fundingopps/fy18lbphr*.

26. HUD Office of Lead Hazard Control and Healthy Homes. OLHCHH Policy Guidance 2017-01 Rev 1. Revised Dust-Lead Action Levels for Risk Assessment and Clearance. February 16, 2017. *https://www.hud.gov/sites/documents/LeadDustLevels_rev1.pdf*.

27. HUD Office of Lead Hazard Control and Healthy Homes. First-Round Clearance Results from Sample of Grants Active as of April 13, 2017. May 24, 2018.

28. CDC, National Center for Health Statistics. National Health and Nutrition Examination Survey: Questionnaires, Datasets, and Related Documentation. *https://wwwn.cdc.gov/nchs/nhanes/Default.aspx*. Accessed May 30, 2018.

29. EPA Office of Pollution Prevention and Toxics. Definition of Lead-Based Paint Considerations. June 2018.

30. Cox et al. (2011). Improving the Confidence Level in Lead Clearance Examination Results through Modifications to Dust Sampling Protocols. Journal of ASTM International, Vol. 8, No. 8. *https://doi.org/10.1520/JAI103469*.

31. EPA Office of Pollution Prevention and Toxics. Revised Final Report on Characterization of Dust Lead Levels After Renovation, Repair, and Painting Activities.

November 13, 2007. *https://www.epa.gov/lead/revised-final-report-characterization-dust-lead-levels-after-renovation-repair-and-painting.*

32. HUD Office of Lead Hazard Control and Healthy Homes. Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing. Second Edition, July 2012.

VI. Statutory and Executive Orders Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and *Executive Order 13563: Improving Regulation and Regulatory Review*

This action is an economically significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Any changes made in response to OMB recommendations have been documented in the docket. The Agency prepared an analysis of the potential costs and benefits associated with this action, which is available in the docket (Ref. 12).

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is expected to be an Executive Order 13771 regulatory action (82 FR 9339, February 3, 2017). Details on the estimated costs of this proposed rule can be found in EPA's analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

This action does not directly impose an information collection burden under the PRA, 44 U.S.C. 3501 *et seq*. Under 24 CFR 35, subpart A and 40 CFR 745, subpart F, sellers and lessors must already provide purchasers or lessees any available records or reports

"pertaining to" LBP, LBP hazards and/or any lead hazard evaluative reports available to the seller or lessor. Accordingly, a seller or lessor must disclose any reports showing dust-lead levels, regardless of the value. Thus, this action would not result in additional disclosures. Because there are no new information collection requirements to consider under the proposed rule, or any changes to the existing requirements that might impact existing ICR burden estimates, additional OMB review and approval under the PRA is not necessary.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq*. In making this determination, the impact of concern is any significant adverse economic impact on small entities. The small entities subject to the requirements of this action are small businesses that are lessors of residential buildings and dwellings (who may incur costs for lead hazard reduction measures in compliance with the HUD Lead Safe Housing Rule or environmental investigations triggered by a child with an EBLL); residential remodelers (who may incur costs associated with additional cleaning and sealing in houses undergoing rehabilitation subject to the HUD Lead-Safe Housing Rule) and abatement firms (who may also incur costs associated with additional cleaning and sealing). The Agency has determined that this rule would impact 39,000 to 44,000 small businesses; 38,000 to 42,000 have cost impacts less than 1% of revenues, 1,000 to 2,000 have impacts between 1% and 3%, and approximately 100 have impacts greater than 3% of revenues. Details of the analysis of the potential costs and benefits associated with this action are presented in the EA, which is available in the docket (Ref. 12).

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The total estimated annual cost of the proposed rule is $66 million to $119 million per year (Ref. 12), which does not exceed the inflation-adjusted unfunded mandate threshold of $154 million.

F. Executive Order 13132: Federalism

This action does not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. States that have authorized LBP Activities programs must demonstrate that they have DLHS at least as protective as the standards at 40 CFR 745.227. However, authorized States are under no obligation to continue to administer the LBP Activities program, and if they do not wish to adopt new DLHS they can relinquish their authorization. In the absence of a State authorization, EPA will administer these requirements. Thus, Executive Order 13132 does not apply to this action.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Tribes that have authorized LBP Activities programs must demonstrate that they have DLHS at least as protective as the standards at 40 CFR 745.227. However, authorized Tribes are under no obligation to continue to administer the LBP Activities program, and if they do not wish to adopt new DLHS they can relinquish

their authorization. In the absence of a Tribal authorization, EPA will administer these requirements. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is economically significant as defined in Executive Order 12866, and because the environmental health or safety risk addressed by this action may have a disproportionate effect on children. (Ref. 5)

The primary purpose of this rule is to reduce exposure to dust-lead hazards in target housing where children reside and in target housing or COFs. EPA's analysis indicates that there will be approximately 78,000 to 252,000 children affected by the rule (Ref. 12).

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations

and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994)

List of Subjects in 40 CFR Part 745

Environmental protection, Target housing, Child-occupied facility, Housing renovation, Lead, Lead poisoning, Lead-based paint, Renovation, Hazardous substances.

Dated: June 22, 2018.

E. Scott Pruitt,

Administrator.

Therefore, 40 CFR chapter I, subchapter R, is proposed to be amended as follows:

PART 745—[AMENDED]

1. The authority citation for part 745 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2681-2692 and 42 U.S.C. 4852d.

2. In § 745.65 paragraph (b) is revised to read as follows:

§ 745.65 Lead-based paint hazards.

* * * * *

(b) *Dust-lead hazard*. A dust-lead hazard is surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding 10 µg/ft^2 on floors or 100 µg/ft^2 on interior window sills based on wipe samples.

* * * * *

3. In § 745.227 paragraph (h)(3)(i) is revised to read as follows:

§ 745.227 Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities

* * * * *

(h) * * *

(3) * * *

(i) In a residential dwelling on floors and interior window sills when the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior window sills are equal to or greater than 10 µg/ft^2 for floors and 100 µg/ft^2 for interior window sills, respectively;

* * * * *

4. Section 745.325 is amended by revising paragraph (e) to read as follows:

§745.325 Lead-based paint activities: State and Tribal program requirements.

* * * * *

(e) *Revisions to lead-based paint activities program requirements.* When EPA publishes in the Federal Register revisions to the lead-based paint activities program requirements contained in subpart L of this part:

(1) A State or Tribe with a lead-based paint activities program approved before the effective date of the revisions to the lead-based paint activities program requirements in subpart L of this part must demonstrate that it meets the requirements of this section in a report that it submits pursuant to §745.324(h) but no later than 2 years after the effective date of the revisions.

(2) A State or Tribe with an application for approval of a lead-based paint activities program submitted but not approved before the effective date of the revisions to the lead-based paint activities program requirements in subpart L of this part must demonstrate that it meets the requirements of this section either by amending its application or in a report that it submits pursuant to §745.324(h) of this part but no later than 2 years after the effective date of the revisions.

(3) A State or Tribe submitting its application for approval of a lead-based paint activities program on or after the effective date of the revisions must demonstrate in its application that it meets the requirements of the new lead-based paint activities program requirements in subpart L of this part.

[FR Doc. 2018-14094 Filed: 6/29/2018 8:45 am; Publication Date: 7/2/2018]